

**Amendment and Response**

Applicant: John T. Ness

Serial No.: 10/629,460

Filed: July 29, 2003

Docket No.: H295.101.101

Title: CONCRETE BLOCK MOLD WITH MOVEABLE LINER

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**REMARKS**

The following remarks are made in response to the Non-Final Office Action mailed January 25, 2006. Claims 55-67 have been withdrawn from consideration. Claims 1-3, 9-16, 23, 33, 40-44, and 50-54 were rejected. Claims 4-8, 17, 22, 34-39, and 45-49 have been objected to. With this Response, claims 2, 3, 23, 28-30, 32, and 50 have been amended, and claims 1, 27, and 31 have been cancelled without prejudice. Claims 2-26, 28-30, and 32-54 remain pending in the application and are presented for reconsideration and allowance.

**Claim Rejections for Provisional Obviousness-Type Double Patenting**

Claims 1, 3, and 9 were provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 3 and 4 of co-pending U.S. Patent Application No. 10/879,381, and over claims 1, 7, 8, and 17-20 of co-pending U.S. Patent Application No. 11/036,147. Applicant respectfully acknowledges the provisional non-statutory obviousness-type double patenting rejections and the Examiner's direction that such rejections can be overcome with timely filed terminal disclaimers in compliance with 37 C.F.R. 1.321(c) or 1.321(d).

However, as is described below, Applicant believes the remaining pending claims of the present invention to be in allowable form. As stated by MPEP 804(I)(B)(1): "If a 'provisional' nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications...the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer." As such, Applicant is not filing terminal disclaimers with regard to the rejections of claims 1, 3, and 9 on the grounds of provisional non-obviousness-type double patenting with respect to claims 3 and 4 of co-pending U.S. Patent Application No. 10/879,381 and with respect to claims 17-20 of co-pending U.S. Patent Application No. 11/036,147, and respectfully requests that these rejections be withdrawn.

Claims 10-16, 23-27, 29-33, 40-44, and 50-54 were provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 3 and 4 of co-pending U.S. Patent Application No. 10/879,381 and over claims 1, 7, 8, and 17-20 of co-

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pending U.S. Patent Application No. 11/036,147, each in view of U.S. Patent No. 4,869,660 to Ruckstuhl. As described above, Applicant believes that the nonstatutory obviousness-type double patenting rejections with respect to claims 3 and 4 of co-pending U.S. Patent Application No. 10/879,381 and to claims 1, 7, 8, and 17-20 of co-pending U.S. Patent Application No. 11/036,147 do not apply. As such, Applicant respectfully requests that the rejections of claims 10-16, 23-27, 29-33, 40-44, and 50-54 on the grounds of provisional non-obviousness-type double patenting with respect to claims 3 and 4 of co-pending U.S. Patent Application No. 10/879,381 and with respect to claims 1, 7, 8, and 17-20 of co-pending U.S. Patent Application No. 11/036,147, each in view of the Ruckstuhl Patent, be withdrawn.

**Claim Rejections under 35 U.S.C. § 102(f)**

Claims 1, 3, and 9 were rejected under 35. U.S.C. 102(f) because the Applicant did not invent the claimed subject matter. The Examiner states that all of the features recited in claims 1, 3, and 9 are anticipated by co-pending U.S. Patent Application No. 11/036,147, which shares one common inventor with the present invention, but includes an additional inventor and, thus, has a different inventive entity as described by MPEP 2137.01. With this response, a statement has been submitted by the attorney of record for the present application showing that the present application and U.S. Patent Application No. 11/036,147 were, at the time their invention, owned by, or subject to an obligation of assignment to, the same organization. As such, Applicant requests that the rejection of claims 1, 3, and 9 under 35 U.S.C. 102(f) be withdrawn.

**Claim Rejections under 35 U.S.C. § 102(b)**

Claims 1, 2, 23-31, and 50-54 were rejected under 35 U.S.C. 102(b) as being anticipated by the Ruckstuhl Patent. With this Response, claims 1, 27, and 31 have been cancelled without prejudice.

Claim 3 has been rewritten in independent form, including all limitations of the base claim and any intervening claims, and is believed allowable over the cited references. As such, allowance of independent claim 3 is respectfully requested. Claims 2 and 23 and were amended

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to depend from patentably distinct independent claim 3. Claims 24-26 depend indirectly from patentably distinct independent claim 3.

Claim 32 has been rewritten in independent form, including all limitations of the base claim and any intervening claims, and is believed allowable over the art of record. Allowance of independent claim 32 is respectfully requested. Claims 28-30, and 50 were amended to depend from patentably distinct independent claim 32. Claims 51-54 depend indirectly from patentably distinct independent claim 32.

In light of the above, Applicant respectfully requests that the rejections of claims 1, 2, 23-31, and 50-54 under 35 U.S.C. 102(b) be withdrawn and allowance of these claims.

**Allowable Subject Matter**

The Examiner objected to claims 4-8, 17-22, 34-39, and 45-49 for being dependent upon a rejected base claim, but as being allowable if rewritten in independent form including all limitations of the base claim and any intervening claims. In light of the above, claims 4-8 and 17-22 depend directly or indirectly from patentably distinct independent claim 3, claims 34-39 and 45-49 depend directly or indirectly from patentably distinct independent claim 32. As such, Applicant respectfully requests that the objections to 4-8, 17-22, 34-39, and 45-49 be withdrawn and allowance of these claims.

**CONCLUSION**

In view of the above, Applicant respectfully submits that pending claims 2-26, 28-30, and 32-54 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 2-26, 28-30, and 32-54 are respectfully requested.

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

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Any inquiry regarding this Amendment and Response should be directed to Steven E. Dicke at Telephone No. (612) 573-2002, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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Date: April 25, 2006

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Steven S. Dicke  
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**CERTIFICATE UNDER 37 C.F.R. 1.8:**

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 25<sup>th</sup> day of April, 2006.

By: Steven S. Dicke  
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